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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,487	04/27/2005	Peter Gmeiner	6102-000109/US/NP	6970
28997 7590 02/25/2008 HARNESS, DICKEY, & PIERCE, P.L.C 7700 BONHOMME, STE 400 ST. LOUIS, MO 63105			EXAMINER RAHMANI, NILOOFAR	
			ART UNIT 1625	PAPER NUMBER
			MAIL DATE 02/25/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/519,487	<b>Applicant(s)</b> GMEINER ET AL.	
	<b>Examiner</b> NILOOFAR RAHMANI	<b>Art Unit</b> 1625	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 November 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,6-10,14-24,26 and 28-39 is/are pending in the application.
- 4a) Of the above claim(s) 15-24,26 and 28-39 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8 and 9 is/are allowed.
- 6) ☒ Claim(s) 1,3,6 and 7 is/are rejected.
- 7) ☒ Claim(s) 10 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>03/29/2005</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Claims 1, 3, 6-10, 14-24, 26, 28-39 are currently pending in the instant application and claims 2, 4-5, 11-13, 25, and 27 are cancelled.

Applicant's election without traverse of group I, claims 1,3,6-10,14-24,26,28-39, drawn to a compound of formula (I), where X being S or O in the reply filed on 11/12/2007 is acknowledged.

Claims 1, 3, 6-10, 14 are examined. Claims 15-24, 26, 28-39 are withdrawn as non-statutory "use" claims are changed to method of using claims. Therefore, claims 15-24, 26, 28-39 are withdrawn per 37 CFR 1.142(b) due to the originally non-elected subject matter and therefore are withdrawn from the consideration. Claims 15-24, 26, 28-39 are withdrawn as non-statutory "use" claims are changed to method of using claims.

The requirement is still deemed proper and is therefore made FINAL.

### ***Priority***

2. This application was filed on 04/27/2005, which is a 371 of PCT/EP03/07060, filed on 07/02/2003, which claims priority of GERMANY 10230062.3, filed on 07/04/2002 and GERMANY 10232020.9, filed on 07/10/2002.

The claimed benefit of priority date is denied. There is no certified translation of the priority document. The filing date of the instant application is 07/02/2003.

3. ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

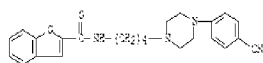
A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1,3,6-7 are rejected under 35 U.S.C. 102(a) as being anticipated by Campiani et al., Journal of Medicinal Chemistry, 2003, Vol. 46, pages 3822-3839. Campiani et al. disclosed the instant claimed compounds

**RN** 600710-10-9

**CN** 2-Benzofurancarboxamide, N-[4-[4-(4-cyanophenyl)-1-piperazinyl]butyl]-



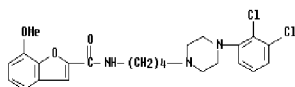
. Therefore,

the instant claim is anticipated by Campiani et al.

4. Claims 1,3,6-7 are rejected under 35 U.S.C. 102(a) as being anticipated by Leopoldo et al., Journal of Medicinal Chemistry, 2002, Vol. 45, pages 5727-5735. Leopoldo et al. disclosed the instant claimed compounds

**RN** 486393-36-6

**CN** 2-Benzofurancarboxamide, N-[4-[4-(2,3-dichlorophenyl)-1-piperazinyl]butyl]-7-methoxy-



Therefore, the instant claim is anticipated by Leopoldo et al.

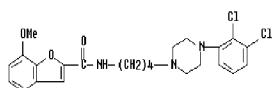
5.

### ***Claim Objections***

Claims 10, and 14 are objected to as being dependent upon a cancelled base claim 1, but would be allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claims.

**6. Allowable Subject Matter**

Claims 8-9 are patentable over Leopoldo et al., Journal of Medicinal Chemistry, 2002, Vol. 45, pages 5727-5735. The reference teaches



which does not encompassed by the instant claims. Therefore, the claims are free of prior art.

**7.** Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niloofar Rahmani whose telephone number is 571-272-4329. The examiner can normally be reached on Monday through Friday from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet Andres, can be reached on 571-272-0867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NILOOFAR RAHMANI

02/11/2008

/D. Margaret Seaman/

Primary Examiner, Art Unit 1625